

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

CRIMINAL APPLICATION NO. 572/2012 (APPA)
IN CRIMINAL APPEAL NO.109/2012

Raju Natthuji Dandale ..vs.. The State of Maharashtra, through PSO Wardha (City),
Tah. & Dist. Wardha

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's Orders.

Court's or Judge's orders.

Mr. Sachin Pujari, Advocate h/f Mr. A. S. Mardikar,
Senior Advocate for applicant.
Mrs.M. H. Deshmukh, A.P.P. for non applicant-State.

CORAM: A.B. CHAUDHARI & P. N. DESHMUKH,JJ.
DATE : FEBRUARY 26, 2015

Heard.

This application has been filed by original
appellant-accused under Section 391 of the Code of
Criminal Procedure for grant of permission for placing
additional evidence on record.

The applicant stated in his affidavit that in his
answer to question no.34 of his statement under Section
313 of the Cr. P. C., he had stated that he was burnt in the
process of dousing the fire in which deceased Lalita was
caught and was shouting. We, reproduce the question as
well as answer as under:

*“Q.No.34. Do you want to say anything more
about this case?”*

Answer:- Prior to the incident, at about 8 to 8.30

in the night, there was quarrel between me and Lalita for money. Thereafter, we had our dinner and then I went to sleep. When I got up in the night, that time she was burning and shouting. I tried to douse her and in that attempt, I also burnt. Thereafter, I ran to the house of Rafiq Gaffar and extinguished the fire which I caught. I did not marry Lalita but was residing with her. Because she had already married.”

The applicant then stated in his application, vide paragraphs 9 and 10 thereof, that there are certified copies of the documents sought to be produced by this application from the Civil Hospital, Wardha and they being the documents maintained during the official course of business, should be allowed to be produced now. They could not be produced during the trial for the reasons stated in paragraph 9. We quote paragraph 9 thus:

“9. It is most humbly submitted that the present appellant is belonging to a poor family in village Zolamba, Post – Sawanga, Tah. Warud, Distt. Amravati. That the family members of the present appellant are illiterate and even the present appellant is also less educated and not even Xth Standard pass. That the appellant had been disowned by his family after his alleged affair with deceased Lalita who was married and older to him

and thus they had moved to Siddharth Nagar in District Wardha. Thus present appellant or his relatives, could not understand the importance of the aforesaid documentary evidence which might have sustained his explanation and hence could not instruct his counsel before the learned trial Court. Also the fact remains that the appellant as soon as was discharged from the hospital on 11.11.2010 was immediately arrested and is in jail since then and thus had no occasion to inform the said fact to anybody. Thus the aforesaid documentary evidence could not be placed on record before the learned trial court during the course of trial bonafidely.”

The application has been replied by the learned A.P.P. and except for paragraph 4, we do not find any serious contest about the nature of documents sought to be filed and that may be so because they are certified copies from the Civil Hospital, Wardha. However, the contest is made on the ground that ample opportunity was available to the applicant to produce and prove those documents by taking recourse to provisions of the Code of Criminal Procedure.

We have considered the application as well as reply carefully. We have seen all the documents along with application and we find therefrom that the applicant had already laid the foundation about which the claim is now

made, he having been burnt in the incident. We, therefore, think that prima facie the relief sought in the present application, does not appear by way of after thought. However, whether the same is after thought or not, is a matter to be traced out in the cross-examination by the Public Prosecutor. We are, however, convinced that the applicant should be allowed to produce the additional evidence sought by the present application for the reasons, which are already stated. We, therefore, allow the application in terms of its prayer clause of the application.

The next question is about exercise of power under section 391 of the Cr.P.C.

Having once allowed the application for production of additional evidence, in our opinion, the genuineness of the documents and defence story placed by the applicant before us in the form of documents etc., will have to be tested by giving opportunity to both the sides and it would be appropriate to ask the Principal Sessions Judge, Wardha to allow both the parties to lead additional evidence, limited to the production and proof of the documents sought to be produced along with this application.

We reproduce Section 391 of the Cr. P. C., which reads thus:

“391. Appellate Court may take further evidence or direct it to be taken.

(1) In dealing with any appeal under this

Chapter, the Appellate Court, if it thinks additional evidence to be necessary, shall record its reasons and may either take such evidence itself, or direct it to be taken by a Magistrate, or when the Appellate Court is a High Court, by a Court of Session or a Magistrate.

(2) When the additional evidence is taken by the Court of Session or the Magistrate, it or he shall certify such evidence to the Appellate Court, and such Court shall thereupon proceed to dispose of the appeal.

(3) The accused or his pleader shall have the right to be present when the additional evidence is taken.

(4) The taking of evidence under this section shall be subject to the provisions of Chapter XXIII, as if it were an inquiry. ”

We, therefore, think that in the present case, the learned Principal Sessions Judge, Wardha should be asked to record additional evidence, limited to the evidence produced before us by way of the present application. The Principal Sessions Judge, after recording the evidence by allowing both the sides namely; State as well as accused to prove the additional evidence produced and also allow the cross-examination of the concerned witnesses, if any. The

prosecution would be entitled to examination of any additional evidence, if it wants, thereafter and shall have right to cross-examine the witness, if any produced at the behest of the appellant-accused. The evidence shall then be certified to this Court and, thereafter, this Court would, upon receipt thereof, proceed to continue the hearing of appeal.

We, therefore, make the following order.

ORDER

- (i) Criminal Application No. 572/2012 is allowed.
- (ii) The documents, as prayed for in the present application, are allowed to be produced in Sessions Trial No. 3/2011.
- (iii) The Principal Sessions Judge, Wardha is directed to record additional evidence giving opportunity to both the sides to the trial.
- (iv) The Principal Sessions Judge shall, thereafter, certify the evidence to this Court within a period of one month from the date of fixed by us today. The appellant-accused shall be produced before the learned Principal Sessions Judge, Wardha on 09.03.2015.
- (v) The accused shall remain in custody of the till disposal of the present appeal.

JUDGE

JUDGE